

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**H.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
LaCrosse, WI, Employer**

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**Docket No. 09-748  
Issued: November 5, 2009**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 23, 2009 appellant, through counsel, filed a timely appeal of an October 3, 2008 nonmerit decision of the Office of Workers' Compensation Programs that denied his request for reconsideration. Because more than one year has elapsed between the most recent merit decision dated September 25, 2007 and the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

**ISSUE**

The issue is whether the Office properly denied appellant's request for reconsideration without further merit review of the claim under 5 U.S.C. § 8128(a).

On appeal, appellant contends that the hearing representative erroneously found that his doctor's restrictions were not persuasive. He also contends errors by the Office in failing to pay his chiropractic bills and in not forwarding all records to his doctor.

## **FACTUAL HISTORY**

This is the second appeal before the Board. The facts and the law as set forth in the prior decision are hereby incorporated by reference.<sup>1</sup> The relevant facts are briefly set forth below.

Appellant, a distribution clerk, filed three claims for occupational disease from July 7, 1991 through July 20, 1992, which were combined. The Office accepted bilateral epicondylitis and shoulder and neck sprains. On December 14, 2009 appellant filed an occupational disease claim that the Office accepted for right shoulder, arm and cervical sprains. The Office accepted that appellant sustained a recurrence of disability on March 14, 2006.

On September 1, 2006 appellant accepted the employing establishment's modified-duty assignment; however, he did not return to work. By letter dated November 30, 2006, the employing establishment advised that the modified-duty offer was still available. The letter instructed appellant to report to work immediately upon receipt of the letter. Appellant did not report to work as scheduled. By letter dated December 6, 2006, the Office informed appellant that the position offered by the employing establishment was suitable and provided him 30 days to accept the position or explain his reasons for rejecting the position. The Office notified appellant of the provisions of 5 U.S.C. § 8106(c)(2) if he failed to accept the position and the consequences to his receipt of wage-loss compensation. After rejecting appellant's reasons for not accepting the position, the Office gave him 15 days to accept the position. Appellant did not return to work. By decision dated February 2, 2007, the Office terminated appellant's wage-loss compensation for failure to accept a suitable job. The decision was affirmed by the hearing representative in a September 25, 2007 decision.

By letter dated September 23, 2008, appellant requested reconsideration, contending that the medical evidence of record established that he could not perform the modified-duty job assignment. He also noted that the Office refused to pay medical care from 1991 through 1999. Appellant contended that the Office improperly found a conflict of medical opinion evidence in 1995 based on an employing establishment physician. He contended that he did not have preexisting degenerative arthritis or disc degeneration as noted by the hearing representative. Appellant contended that he reported for suitable work but the employing establishment refused to let him report for duty and then took disciplinary action against him. He did not submit any new evidence.

By decision dated October 3, 2008, the Office denied appellant's request for reconsideration without further merit review.

## **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>2</sup> the Office's regulations provide that the evidence or

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<sup>1</sup> Docket No. 04-260 (issued June 15, 2004) (the Board affirmed the Office's decision that appellant was not entitled to a schedule award greater than 14 percent impairment to his left upper extremity and 12 percent impairment to his right upper extremity).

<sup>2</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>3</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>4</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.<sup>5</sup>

### **ANALYSIS**

On appeal appellant made various arguments regarding the merits of his claim. However, as noted, because more than one year elapsed between the most recent merit decision of September 25, 2007 to the filing of this appeal, the Board lacks jurisdiction to review the merits of his claim.<sup>6</sup> The only issue before the Board is whether the Office properly denied his reconsideration request.

Appellant did not make any new argument that the Office erroneously applied or interpreted a specific point of law; nor did he advance a relevant legal argument not previously considered by the Office. His arguments contests the hearing representative's evaluation of the factual evidence of this case and the nonpayment of certain medical expenses. These matters are not relevant to the basis of the underlying issue in this case, the termination of his wage-loss benefits for refusing suitable work. Appellant did not submit any evidence to support his contention that he reported for work and was refused duty by the employing establishment. Furthermore, he did not submit any pertinent new and relevant evidence with his request for reconsideration.

The Board therefore finds that appellant did not meet any of the standards of 20 C.F.R. § 10.606(b)(2). Accordingly, the Office properly denied his application for reconsideration without review of the merits of the claim.

### **CONCLUSION**

The Board finds that the Office properly denied appellant's request for reconsideration without merit review of the claim.

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<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

<sup>4</sup> *Id.* at § 10.607(a).

<sup>5</sup> *Id.* at § 10.608(b).

<sup>6</sup> *Id.* at §§ 501.2(c) and 501.3(d)(2).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 3, 2008 is affirmed.

Issued: November 5, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board